

ASSEMBLY – 35TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 16: Improvement of safety oversight

OVERSIGHT OF FRACTIONAL OWNERSHIP OPERATIONS

(Presented by the United States of America)

INFORMATION PAPER

SUMMARY

Fractional ownership is a program involving shared aircraft ownership, dry leasing of aircraft among owners within that program, and the use of a single program manager to provide aviation expertise and management services to those owners. The U.S. Federal Aviation Administration (FAA) has recently published a final rule on fractional ownership programs and program aircraft operations that recognizes these operations as private, general aviation operations. The rule further establishes increased safety standards and oversight comparable to that pertaining to an air carrier. This paper provides information on the background of U.S. fractional ownership programs, the FAA regulations for these programs, and ongoing activities involving fractional ownership programs.

References

14 CFR Part 91 (Subpart F and Subpart K)

1. INTRODUCTION

1.1 Fractional ownership programs were established in the United States in the mid 1980's based on a combination of existing private aviation concepts of traditional aircraft management, shared or joint ownership, and aircraft interchange or dry leasing arrangements. The growth and complexity of the fractional ownership industry raised the question of the appropriate regulatory structure.

1.2 The FAA created the Fractional Ownership Aviation Rulemaking Committee (FOARC) to make recommendations to the FAA on the appropriate regulation of these programs. The FOARC was comprised of a balanced representation of industry members as well as several government representatives. The FOARC recommendations formed the basis of the FAA's rule.

1.3 Primary issues included a determination of whether programs were private or commercial operations, operational control, and safety. Additional issues included the economic regulation of international fractional ownership program aircraft operations.

1.4 The FAA's final rule was published on September 17, 2003 and was effective on November 17, 2003. Existing fractional ownership programs have 15 months to implement the new provisions. New entrants must meet the new requirements before conducting program flights. The rule defines fractional ownership programs, and spells out operational control responsibilities, program manager responsibilities, and safety standards. A brief discussion of each of these elements is provided below.

2. **DISCUSSION**

2.1 The final rule recognizes fractional ownership operations as private, general aviation operations. This determination recognizes the fractional owner's significant capital investment in, and ownership of, an undivided fractional interest in a program aircraft. It also recognizes that the use of program aircraft and program manager services for private, general aviation operations in the fractional ownership program is available only to the aircraft fractional owners in that program. The regulation prohibits an owner from holding out to provide transportation for compensation or hire.

2.2 The FAA's regulation clearly defines a fractional ownership program and program elements. A program must have two or more aircraft with one aircraft having more than one owner. It defines a minimum fractional ownership interest as 1/16 of an airplane or 1/32 of a helicopter. A dry-lease exchange arrangement must be established among owners in the program. This dry-lease exchange is an arrangement among owners in a program to share aircraft with other owners in that same program. An owner can fly on an aircraft owned by the owner or on an aircraft from the "pool" of aircraft in that program. If a program aircraft is not available the program manager may arrange for substitute transportation, although an air carrier must provide that transportation. An owner is notified if a charter aircraft is substituted for a program aircraft on the owner's flight. A single program manager provides aviation expertise and management services for the program. The regulation provides a requirement that the program contracts for such things as management services and the dry-lease exchange be multi-year contracts.

2.3 The regulation clarifies when the owner has operational control, and when that control is held by the program manager. An owner has operational control when that owner directs that a program aircraft carry persons or property and the aircraft (either the owner's own aircraft or an aircraft from the dry-lease exchange pool) is carrying those persons or property. The owner is ultimately responsible for safe operations and for regulatory compliance, but can delegate performance of tasks to the program manager, and rely on the program manager for aviation expertise and aviation management services. The program manager is then jointly responsible for regulatory compliance. The regulation requires briefings of passengers and acknowledgements of operational control responsibilities by the owners. The program manager is in operational control when using the aircraft for training, sales demonstration, ferry or positioning flights.

2.4 Program manager responsibilities are detailed in the regulation and in the contracts with the owners. The program manager acts as the point of contact for communications with the FAA. The program manager provides aviation expertise and aviation management services including, but not limited to, developing safety guidelines, employing and training crew, scheduling and coordination of the program aircraft and crew, overseeing the maintenance of the aircraft, satisfying recordkeeping requirements, developing manuals and procedures, and obtaining and maintaining management specifications and other approvals. Program approvals and authorizations, including management specifications, are issued by the FAA to the program manager on behalf of the collective owners in that program.

2.5 Certain prohibitions and limitations on the owner and program manager are detailed in the regulation. They cannot carry persons or property for compensation or hire except in very limited situations defined in the rule. The rule maintains the integrity of a minimum share size and prohibits the subleasing of aircraft shares smaller than the minimum fractional ownership interest unless the flights associated with the use of those shares are conducted under the commercial charter rules. Further, there must be a predetermined method or ratio to determine hours of use assigned to a share size and the hours of use by an owner cannot exceed the number of hours associated with the owner's interest in the aircraft.

2.6 Subpart K of Part 91 establishes high safety standards and oversight comparable to that pertaining to air carriers. These higher regulatory safety standards were based on air carrier rules and corporate best practices. Program managers are issued management specifications that are similar to air carrier operations specifications and outline program authorizations. An air operator certificate (AOC) is not issued, as the program manager is not considered a commercial air transportation provider when it is assisting the owner to conduct the owner's program flights with program aircraft.

2.7 Discussions on policy and regulation pertaining to international fractional ownership program aircraft operations are continuing between the United States and the European Civil Aviation Conference (ECAC). Government and industry representatives are participating in these discussions which are expected to continue at least through calendar year 2004.

3. **CONCLUSION**

3.1 Fractional ownership program aircraft operations in the U.S. are regulated as private, general aviation operations. Fractional ownership programs to date have operated with a high degree of safety. The FAA's recent rulemaking provides a regulatory definition of these programs and their elements, clarifies operational control responsibilities, and sets high safety standards for program operations. International policy and operational discussions are ongoing.